

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

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6 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING A LOCAL GOVERNMENT TO ENTER INTO  
7 ENERGY PERFORMANCE CONTRACTS; PROVIDING CRITERIA FOR AWARDING ENERGY  
8 PERFORMANCE CONTRACTS; SETTING THE TERM OF ENERGY PERFORMANCE CONTRACTS;  
9 REQUIRING MONITORING AND REPORTING OF ENERGY PERFORMANCE CONTRACTS; PROVIDING  
10 THAT LOCAL GOVERNMENT STATUTORY PROCUREMENT REQUIREMENTS DO NOT APPLY TO THE  
11 PROCUREMENT OF AN ENERGY PERFORMANCE CONTRACT; CLARIFYING THAT ENERGY  
12 PERFORMANCE CONTRACTS AND AGREEMENTS ARE NOT A GENERAL OBLIGATION OF A LOCAL  
13 GOVERNMENT UNIT; AMENDING SECTIONS 7-12-2131, 7-12-4141, 20-9-204, AND 20-15-104, MCA; AND  
14 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17  
18 NEW SECTION. **Section 1. Legislative findings and policy.** (1) The legislature finds that:

19 (a) conserving energy in local government buildings and vehicles will have a beneficial effect on our  
20 overall supply of energy and can result in cost savings for taxpayers;

21 (b) conserving water can result in cost savings for taxpayers; and

22 (c) energy performance contracts are a means by which local government units can achieve energy and  
23 water conservation without an initial capital outlay.

24 (2) It is the policy of the state of Montana to promote energy and water conservation in local government  
25 buildings and energy conservation in vehicles by authorizing local government units to enter into energy  
26 performance contracts.

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28 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7], the following definitions  
29 apply:

30 (1) "Conservation-related cost savings" means cost savings in the operating budget of a local



1 government unit that are a direct result of energy conservation measures or water conservation measures  
2 implemented pursuant to an energy performance contracting project.

3 (2) "Energy conservation measures" means training programs or modifications to buildings, systems,  
4 or vehicles that are designed to reduce energy consumption or conservation-related operating costs and may  
5 include but are not limited to:

6 (a) insulation of the building structure or systems within the building;

7 (b) storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat-absorbing  
8 or heat-reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or  
9 other window and door system modifications that reduce energy consumption;

10 (c) automated or computerized energy control systems;

11 (d) heating, ventilating, or air conditioning system modification or replacement;

12 (e) replacement or modification of lighting fixtures to increase the energy efficiency of the lighting  
13 system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to  
14 conform to the applicable state or local building codes or nationally accepted standards for the lighting system  
15 after the proposed modifications are made;

16 (f) energy recovery systems;

17 (g) solar heating and cooling systems, other renewable energy systems, or alternative energy systems;

18 (h) cogeneration or combined heat and power systems that produce steam, chilled water, or forms of  
19 energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

20 (i) maintenance and operation management systems that provide long-term operating cost reductions;

21 (j) traffic control systems;

22 (k) alternative fuel options or accessories for vehicles;

23 (l) procurement of low-cost utility supplies of all types, including but not limited to electricity, natural gas,  
24 and water;

25 (m) building operation programs that reduce energy costs, including but not limited to computerized  
26 programs, training, and other similar activities; and

27 (n) any additional building infrastructure improvements that produce conservation-related cost savings  
28 and provide long-term operating cost reductions, significantly reduce energy consumption, or increase the  
29 energy efficiency of the facilities for their appointed functions and are in compliance with all applicable state  
30 building codes.

1           (3) "Energy performance contract" means a contract between a local government unit and a qualified  
2 provider or qualified energy service for evaluation, recommendation, and implementation of one or more energy  
3 or water conservation measures. The contract must include, at a minimum, the design and installation of  
4 equipment and, if applicable, operation and maintenance of any of the conservation measures implemented.

5           (4) "Financial grade energy audit" means a comprehensive building energy systems audit performed  
6 by a professional engineer licensed in the state of Montana for the purpose of identifying and documenting  
7 feasible energy and water conservation measures and cost savings factors.

8           (5) "Local government unit" means a county, a consolidated government, an incorporated city or town,  
9 a school district, a special district, or a community college district.

10          (6) "Person" means an individual, corporation, partnership, firm, association, cooperative, limited liability  
11 company, limited liability partnership, or any other similar entity.

12          (7) "Qualified energy service" means a person who:

13           (a) has a record of established energy performance contracts or with demonstrated technical,  
14 operational, financial, and managerial capabilities to implement energy performance contracts; and

15           (b) (i) is or has an employee who is a Montana licensed architect or a Montana licensed professional  
16 engineer; or

17           (ii) associates or contracts with a Montana licensed architect or a Montana licensed professional  
18 engineer to provide integral services under an energy performance contract.

19          (8) "Qualified provider" means a person who:

20           (a) is experienced in the design, implementation, and installation of energy and water conservation  
21 measures and building improvement measures;

22           (b) has the technical capabilities to ensure that the measures generate conservation-related cost  
23 savings;

24           (c) has the ability to secure necessary financial measures to support energy savings guarantees;

25           (d) (i) is or has an employee who is a Montana licensed architect or a Montana licensed professional  
26 engineer; or

27           (ii) associates or contracts with a Montana licensed architect or a Montana licensed professional  
28 engineer to provide integral services under an energy performance contract.

29          (9) "Water conservation measures" means training programs, changes in maintenance practices, or  
30 facility or landscape alterations designed to reduce water consumption or conservation-related operating costs.

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2           **NEW SECTION. Section 3. Authority to enter into energy performance contracts.** A local  
3 government unit may enter into an energy performance contract with a qualified provider or a qualified energy  
4 service under the procedures provided in [section 4].

5  
6           **NEW SECTION. Section 4. Award of energy performance contracts.** (1) A local government unit  
7 shall request qualifications from qualified providers and qualified energy services, inviting them to submit  
8 information describing their capabilities in the areas of:

- 9           (a) design, engineering, installation, maintenance, and repairs associated with energy performance  
10 contracts;
- 11           (b) experience in conversions to a different energy or fuel source, as long as it is associated with a  
12 comprehensive energy efficiency retrofit;
- 13           (c) postinstallation project monitoring, data collection, and reporting of savings;
- 14           (d) overall project experience and qualifications;
- 15           (e) management;
- 16           (f) ability to assess the long-term financing or to integrate existing financial resources, such as utility  
17 rebates and intercap loans, into the project;
- 18           (g) experience with projects of similar size, scope, and in-state locations; and
- 19           (h) other factors determined by the local government unit to be relevant and appropriate relating to the  
20 ability of a qualified provider or a qualified energy service to perform the project.

21           (2) The local government unit is not required to select the proposal that provides the lowest cost among  
22 the proposals.

23           (3) Upon award of the energy performance contract, the successful qualified provider or qualified energy  
24 service shall prepare a financial grade energy audit that, upon acceptance by the local government unit,  
25 becomes a part of the final energy performance contract.

26           (4) Statutory procurement requirements for professional services, construction contracts, or other public  
27 contracted services provided for in 7-12-2131, 7-12-4141, 20-9-204, and 20-15-104 that conflict with the  
28 requirements of this section do not apply to procurement for an energy performance contract.

29  
30           **NEW SECTION. Section 5. Term of energy performance contract.** (1) The term of the energy

1 performance contract must be the useful life of the energy and water conservation measures or 10 years,  
2 whichever is less.

3 (2) The qualified provider or qualified energy service entering into an energy performance contract  
4 under this section shall either:

5 (a) guarantee the conservation-related cost savings in the energy performance contract to the extent  
6 necessary to make the payment for the energy conservation measures or water conservation measures,  
7 including financing charges to be incurred over the life of the contract; or

8 (b) provide a performance bond satisfactory to the local government unit, executed by a surety company  
9 authorized to do business in this state and approved in federal circular 570 published by the U.S. department  
10 of treasury. The bond must guarantee the conservation-related cost savings and must be in an amount equal  
11 to the amount of the conservation-related cost savings provided in the energy performance contract.

12

13 **NEW SECTION. Section 6. Monitoring and reports.** (1) During the term of an energy performance  
14 contract, the qualified provider or qualified energy service shall monitor the reductions in energy consumption  
15 and cost savings attributable to the energy and water conservation measures installed pursuant to the energy  
16 performance contract.

17 (2) The qualified provider or qualified energy service shall annually prepare and provide a report to the  
18 local government unit documenting the performance of the energy and water conservation measures.

19

20 **NEW SECTION. Section 7. Contracts and agreements not general obligation of local government**  
21 **unit.** Payment obligations of a local government unit pursuant to an energy performance contract are not general  
22 obligations of the local government unit and are collectible only from conservation-related cost savings provided  
23 in the energy performance contract and other revenue, if any, pledged in the energy performance contract.

24

25 **Section 8.** Section 7-12-2131, MCA, is amended to read:

26 **"7-12-2131. Bids for district work -- exception.** (1) Except as provided in subsection (3) and [section  
27 4(4)], the board of county commissioners may call for bids for proposals for several kinds or types of materials  
28 for any of the improvements proposed, reserving the right to select the kind or type of materials to be used in  
29 making any of the improvements after the bids or proposals have been opened, examined, and declared.

30 (2) All proposals or bids offered must be accompanied by bid security as provided for in Title 18, chapter

1 1, part 2. The proposals or bids must be delivered to the county clerk.

2 (3) If the proposed improvement is the conversion of overhead utilities to an underground location as  
3 provided for in 7-12-4102(2)(i), the work must be performed by the public utility responsible for the cost and  
4 feasibility report required under 69-4-313."

5

6 **Section 9.** Section 7-12-4141, MCA, is amended to read:

7 **"7-12-4141. Bid for work -- exception.** (1) Except as provided in subsection (4) and [section 4(4)],  
8 the city council may call for bids or proposals for several kinds and types of materials for the improvements  
9 proposed to be made under this part and part 42, reserving the right to select the kind or type of material to be  
10 used in making the improvements after the bids or proposals have been opened, examined, and declared.

11 (2) Notice inviting proposals and referring to the specifications on file must be published as provided  
12 in 7-1-4127.

13 (3) The time fixed for the opening of bids may not be less than 5 days or more than 12 days from the  
14 time of the final publication of the notice. If the advertisement is made by posting, 15 days must elapse, including  
15 the day of posting, between the time of the posting of the advertisement and the day set for opening bids. The  
16 proposals or bids offered must be accompanied by bid security as provided for in Title 18, chapter 1, part 2. The  
17 proposals or bids must be delivered to the clerk of the city council.

18 (4) If the proposed improvement is the conversion of overhead utilities to an underground location, the  
19 work must be performed by the public utility responsible for the cost and feasibility report required under  
20 69-4-313."

21

22 **Section 10.** Section 20-9-204, MCA, is amended to read:

23 **"20-9-204. Conflicts of interests, letting contracts, and calling for bids.** (1) It is unlawful for a trustee  
24 to:

25 (a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while  
26 acting in that official capacity or by the board of trustees of which the trustee is a member; or

27 (b) be employed in any capacity by the trustee's own school district.

28 (2) For the purposes of subsection (1):

29 (a) "pecuniary interest" does not include holding an interest of 10% or less in a corporation;

30 (b) "contract" does not include:

1 (i) merchandise sold to the highest bidder at public auctions;  
2 (ii) investments or deposits in financial institutions that are in the business of loaning or receiving money  
3 when the investments or deposits are made on a rotating or ratable basis among financial institutions in the  
4 community or when there is only one financial institution in the community; or

5 (iii) contracts for professional services, other than salaried services, or for maintenance or repair services  
6 or supplies when the services or supplies are not reasonably available from other sources if the interest of any  
7 board member and a determination of the lack of availability are entered in the minutes of the board meeting  
8 at which the contract is considered.

9 (3) Except for district needs that must be met because of an unforeseen emergency, as defined in  
10 20-3-322(5), or as provided in subsection (4) of this section, whenever the estimated cost of any building,  
11 furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds  
12 the sum of \$25,000, the work done or the purchase made must be by contract. Each contract must be let to the  
13 lowest responsible bidder after advertisement for bids. The advertisement must be published in the newspaper  
14 that will give notice to the largest number of people of the district as determined by the trustees. The  
15 advertisement must be made once each week for 2 consecutive weeks, and the second publication must be  
16 made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this  
17 section is void. The bidding requirements applicable to services performed for the benefit of the district under  
18 this section do not apply to:

- 19 (a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;  
20 (b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;  
21 (c) an attorney;  
22 (d) a consulting actuary;  
23 (e) a private investigator licensed by any jurisdiction;  
24 (f) a claims adjuster; ~~or~~  
25 (g) an accountant licensed under Title 37, chapter 50; or  
26 (h) a qualified provider or a qualified energy service under [sections 1 through 7].

27 (4) A district may enter into a cooperative purchasing contract for the procurement of supplies or  
28 services with one or more districts. The award of a contract to a successful bidder must comply with the  
29 requirements of subsection (5). The request for bids must be advertised in a daily newspaper of general  
30 circulation in each county in which a district participating in the cooperative purchasing contract is located. The

1 advertisement must be made once each week for 2 consecutive weeks, and the second publication must be  
2 made not less than 5 days or more than 12 days before consideration of bids.

3 (5) Whenever bidding is required, the contract must be awarded to the lowest responsible bidder,  
4 except that all bids may be rejected.

5 (6) This section may not require the board of trustees to let a contract for any routine and regularly  
6 performed maintenance or repair project or service that can be accomplished by district staff whose regular  
7 employment with the school district is related to the routine performance of maintenance for the district."  
8

9 **Section 11.** Section 20-15-104, MCA, is amended to read:

10 **"20-15-104. Pecuniary interest and letting contracts.** (1) It ~~shall be~~ is unlawful for any community  
11 college district trustee to:

12 (a) have any pecuniary interest, either directly or indirectly, in the erection of ~~any~~ a community college  
13 building in ~~his~~ the trustee's district; ~~or~~

14 (b) be involved in furnishing or repairing ~~the same~~ a community college building; ~~or~~

15 (c) be in any manner connected with the furnishing of supplies for the maintenance of the college; ~~or~~  
16 ~~to~~

17 (d) receive or accept any compensation or reward for services rendered as trustee, except as ~~herein~~  
18 provided in this section.

19 (2) ~~The~~ Except as provided in [section 4(4)], the board of trustees shall let contracts for building,  
20 furnishing, repairing, or other work or supplies for the benefit of the district according to the following rules and  
21 procedures:

22 (a) The board of trustees need not meet requirements relating to advertising or bidding if a proposed  
23 contract for building, furnishing, repairing or other work or supplies is for less than \$5,000.

24 (b) Whenever the proposed contract costs are less than \$25,000 but more than \$5,000, the board of  
25 trustees shall procure at least three informal bids, if reasonably available, from contractors licensed in Montana.

26 (c) Whenever the proposed contract costs are more than \$25,000, the board of trustees shall solicit  
27 formal bids and advertise once each week for at least 2 weeks in a newspaper published in each county ~~wherein~~  
28 in which the area of the district lies, calling for bids to perform ~~such~~ the work or furnish ~~such~~ the supplies. If  
29 advertising is required, the board shall award the contract to the lowest responsible bidder. However, the board  
30 of trustees has the right to reject any ~~and all~~ bids."

